

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL COLLINS,

Plaintiff-Appellant,

v

DARREL STANFORD,

Defendant-Appellee,

and

PAT SMIAROWSKI, and MPD TRUCKING,
LLC,

Defendants.

UNPUBLISHED

May 17, 2016

No. 326006

Berrien Circuit Court

LC No. 13-000349-CZ

Before: RIORDAN, P.J., and SAAD and MARKEY, JJ.

PER CURIAM.

Plaintiff Michael Collins appeals as of right a trial court judgment of no cause of action entered after a bench trial and the subsequent order denying his motion for a new trial. We affirm.

I. FACTUAL BACKGROUND

This case arises out of plaintiff's claim that defendant Darrel Stanford¹ wrongfully acquired ownership of a truck that plaintiff owned.

A. PLAINTIFF'S ACCOUNT

According to plaintiff's trial testimony, defendant approached him during the winter months of 2010 or 2011 because he wanted to work for plaintiff. At that time, the two men made

¹ Because defendant Darrel Stanford is the only defendant involved in this appeal, we will refer to him as "defendant" in this opinion.

a verbal “deal” or “arrangement,” under which defendant agreed to paint some equipment that plaintiff was planning to sell at an auction in exchange for a certain “dollar figure.” Subsequently, the parties loaded the equipment to be painted into plaintiff’s 1993 Ford L-9000 truck, and plaintiff drove the truck to another location so that defendant could work on the equipment. At that point, plaintiff did not want to bother bringing the truck back to his property for a variety of reasons, so he decided to leave the truck in defendant’s possession until it was time to transport the painted equipment back to his own property. Dustin Carlisle, who testified at trial, was present when plaintiff left the truck with defendant. At trial, plaintiff denied that he left the truck in defendant’s possession so that defendant could repair it.

At some point later, plaintiff noticed that some of his machinery was missing. From what we can gather from plaintiff’s testimony, he went, along with Carlisle, to the property where the truck was still located to discuss the missing equipment with defendant. Plaintiff testified that defendant admitted during the discussion that he “scrapped” the equipment that was missing without plaintiff’s permission. Plaintiff then “demanded all of [his] stuff back.” An argument about the truck and other items then erupted between the parties, at which time defendant called Pat Smiarowski, who lived a few miles away. According to plaintiff, when Smiarowski arrived, defendant “start[ed] ranting” and asked Smiarowski to “write [plaintiff] a fake bill over \$5,000.00 . . . because [plaintiff] won’t pay it and he won’t get that truck back.”² At some point during the discussion, plaintiff decided that the conversation “wasn’t going nowhere [sic],” so he and Carlisle left the scene.

Before plaintiff left, however, defendant called the police. Plaintiff explained at trial that he did not attempt to reclaim his truck at that time because he did not trust the police, he did not believe that the police would have done anything about the situation, and he believed that the police would have told him that this constituted a civil matter that needed to be decided in court. He further explained that his opinion about the police at that time was relevant because he was concerned that his physical safety could have been jeopardized if he had attempted to retrieve all of his property while defendant and Smiarowski were present. Accordingly, he decided that he would resolve this matter in court.

At some point later, plaintiff returned to the scene and discovered that his truck was missing and “[e]verything [was] gone.” He subsequently notified the police and attempted to recover the truck through criminal proceedings, but the local prosecutor never filed charges against defendant.

B. DEFENDANT’S ACCOUNT

Defendant’s recollection of the parties’ interactions differed significantly. According to defendant, he performed various repairs on the truck at plaintiff’s request. However, after

² From what we can discern from plaintiff’s disjointed and unclear testimony, it appears plaintiff claimed that defendant instructed Smiarowski to forge a bill for repairs that defendant did not perform on the truck so that defendant could obtain a lien over the truck and, therefore, obtain title to the truck when plaintiff failed to pay the forged bill.

working on it, “the vehicle sat,” so he sent a registered letter to plaintiff and then attempted to contact him by phone. After receiving no response, defendant contacted the Berrien County Sheriff, who “stickered” the vehicle as abandoned.³ Defendant explained that the sheriff attempted to notify plaintiff, but was unable reach plaintiff at his residence. The vehicle then “s[a]t for three more months.” Defendant then applied for title to the truck as an abandoned vehicle. After acquiring ownership, defendant transferred the truck to a company that he jointly owns with Smiarowski.

Defendant testified that he worked with an investigator through the State of Michigan at some point during this process, which he described as dealing with “the criminal side of [the situation],” explaining that he was found to have complied with Michigan law. Most notably, defendant maintained at trial that plaintiff never demanded return of the truck and, instead, left it abandoned for more than 91 days on his property after he got the truck running and completed the other work that plaintiff had asked him to do. However, defendant also acknowledged that plaintiff never told him to keep the vehicle. Additionally, he confirmed that he never told plaintiff that he was not allowed to retrieve the truck because he owed money to defendant. He also noted that at some point, which is not apparent from the trial transcript, plaintiff and someone else threatened him with physical violence while he was in possession of the truck, and defendant called the police.⁴

C. PROCEDURAL HISTORY

In December 2013, plaintiff filed a complaint against defendant and Smiarowski alleging one count of “injunctive and declaratory relief” and one count of “civil conspiracy.”⁵ Under his “injunctive and declaratory relief” claim, plaintiff alleged, *inter alia*, that defendant refused to return plaintiff’s truck and other items, and that defendant “fraudulently had the truck declared abandoned,” thereby acquiring title to it. Under his civil conspiracy claim, plaintiff alleged that Smiarowski conspired with defendant to unlawfully retain plaintiff’s vehicle and fraudulently “take unlawful ownership of the vehicle, converting it for their own use,” by ultimately transferring the title to MPD Trucking.

In November 2014, following the bench trial, the court found that plaintiff had failed to carry his burden of proof and entered a judgment of no cause of action. In its written opinion, the trial court provided the following factual findings and reasoning:

³ Plaintiff denied at trial that he was ever aware that the vehicle was considered abandoned or “stickered abandoned” by the Berrien County Sheriff.

⁴ Based on other testimony, we presume that the other individual was Carlisle. At trial, however, Carlisle denied that he and plaintiff threatened defendant.

⁵ Plaintiff later filed an amended complaint, which added MPD Trucking, LLC, as a defendant and included additional allegations against MPD Trucking and Pat Smiarowski. The parties stipulated to the dismissal without prejudice of plaintiff’s claims against MPD Trucking and Smiarowski.

This case involves a commercial transaction between the parties, and Plaintiff had the burden of proof. Commercial transactions generally are documented, giving rise to exceptions to the hearsay rule for records made and kept in the ordinary course of business and absence of matters from such records. These exceptions exist because experience has established that such records or, [sic] their absence, provide reliable evidence of what occurred or did not occur. Plaintiff presented no documentation of the transaction, only documents that supported Defendant's acquisition of title to the truck as an abandoned vehicle. In the absence of such documents, I am not persuaded that the transaction occurred as contended by Plaintiff. Accordingly, I find that Plaintiff has failed to carry his burden of proof. [Footnotes omitted.]

In December 2014, plaintiff filed, *in propria persona*, a motion for new trial on the grounds that his counsel excluded important evidence during the trial and failed to inform plaintiff and other witnesses of the time and date of trial, resulting in the omission of relevant evidence and witness testimony. At the hearing on his motion, plaintiff also argued that the other defendants should not have been dismissed from this suit. After hearing plaintiff's arguments, the trial court explained that a motion for new trial is governed by MCR 2.611, and the only two grounds for a new trial that could apply in this case, given plaintiff's disjointed arguments, were that (1) a new trial is necessary given newly discovered evidence that plaintiff could not have produced before trial, and (2) a new trial is warranted because the trial court's findings were against the great weight of the evidence. The court denied plaintiff's motion because plaintiff made no showing of newly discovered evidence; he only argued that evidence in his possession had not been produced because it was not brought to trial. Additionally, the trial court found that the verdict was not against the great weight of the evidence, and that the previous trial court judge "wrote a very clear opinion finding that -- that the -- your case was not sufficient to carry the burden of proof."

II. WHETHER THE TRIAL COURT'S FACTUAL FINDINGS WERE INSUFFICIENT AND CLEARLY ERRONEOUS

First, plaintiff challenges the trial court's factual findings, arguing that they were insufficient and clearly erroneous. He also contends that the trial court's factual findings reveal that the court decided a case different from the one that was before it. We disagree.

A. STANDARD OF REVIEW AND APPLICABLE LAW

"This Court reviews a trial court's findings of fact following a bench trial for clear error and reviews de novo the trial court's conclusions of law." *Trader v Comerica Bank*, 293 Mich App 210, 215; 809 NW2d 429 (2011). "A finding is clearly erroneous if there is no evidentiary support for it or if this Court is left with a definite and firm conviction that a mistake has been made." *Trahey v City of Inkster*, 311 Mich App 582, 593; 876 NW2d 582 (2015) (quotation marks and citation omitted).

MCR 2.517(A) provides, in relevant part:

(1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

(2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.

(3) The court may state the findings and conclusions on the record or include them in a written opinion.

Accordingly, under MCR 2.517(A), “[f]indings of fact regarding matters contested at a bench trial are sufficient if they are [b]rief, definite, and pertinent, and it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation.” *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995) (quotation marks and citation omitted; alteration in original). “Brevity alone is not fatal to a trial court’s opinion because the rule does not require overelaboration of detail or particularization of facts.” *Powell v Collias*, 59 Mich App 709, 714; 229 NW2d 897 (1975) (citing a former version of the Michigan Court Rules with substantively identical language).

B. ANALYSIS

Plaintiff contends that the trial court erred in focusing on the lack of evidence of a “commercial transaction” in this case rather than the conversion claim that was before the trial court. We reject plaintiff’s claim.

Contrary to plaintiff’s characterization of the trial court’s opinion, the trial court did not state that it was *deciding* a commercial transaction issue or determining whether plaintiff had legal grounds to enforce the terms of a commercial transaction or agreement against defendant. It merely stated that “[t]his case *involves* a commercial transaction between the parties[.]” (Emphasis added.) Further, the trial court properly stated that plaintiff carried the burden of proof in this suit: “in a civil proceeding,” such as that involving a conversion claim, “the burden of proof is on the plaintiff to prove its case by a preponderance of the evidence.” *Children of Chippewa, Ottawa & Potawatomy Tribes v Regents of Univ of Michigan*, 104 Mich App 482, 497; 305 NW2d 522 (1981). See also, e.g., *Hoffman v Loud*, 111 Mich 156, 156-158; 69 NW 231 (1896) (explaining that the plaintiff carried his burden of proving his conversion claim by a preponderance of the evidence); *Wessels v Beeman*, 87 Mich 481, 488; 49 NW 483 (1891).

Plaintiff also fails to recognize that his claims directly arise from a commercial transaction. A “commercial transaction” is “[a] business deal or arrangement that alters legal rights.” *Black’s Law Dictionary* (10th ed). In his complaint, plaintiff specifically alleged, *inter alia*, that he (1) hired defendant to clean and paint business equipment and personal property that plaintiff was preparing to sell, (2) he did not ask defendant to perform any repairs on the truck, (3) defendant never returned the truck, despite the parties’ agreement that defendant would return it along with the equipment after he completed the cleaning and painting that he was hired to perform, and (4) despite plaintiff’s requests for him to return the property, defendant failed to do

so. Likewise, according to plaintiff's and Carlisle's testimony at trial, this "commercial transaction" was the reason why defendant initially acquired possession of plaintiff's truck, as plaintiff loaded the equipment into the truck and transported it to another location so that defendant could paint it. Notably, plaintiff's counsel specifically recognized this fact during his opening statement at trial, when he explained,

Back in 2011[,] Mr. Stanford was, for lack of a better word, hired by Mr. Collins to repair some of his equipment, paint some equipment[,] and essentially help him to get that equipment ready to sell at auction. In doing so, Mr. Collins allowed Mr. Stanford to borrow this L-9000 dump truck to haul equipment and essentially use it to get the equipment ready to sell at action.

It is apparent that plaintiff's understanding of the terms of the business relationship directly affected the time at which he claims to have asked defendant to return the truck. As such, it is clear that whether this commercial "transaction occurred as contended by [p]laintiff" was very relevant in this case, as plaintiff's claims regarding the nature of the transaction between himself and defendant constituted the factual foundation of plaintiff's conversion claim. Cf. *Aroma Wines & Equip, Inc v Columbian Distribution Services, Inc*, 497 Mich 337, 351-357; 871 NW2d 136 (2015) (discussing the conduct that may give rise to common law or statutory conversion claims). Thus, it is logical that whether the trial court found plaintiff's account of the transaction to be credible largely dictated whether it found plaintiff's account of the alleged conversion and related civil conspiracy to be believable. Accordingly, we reject plaintiff's claim that the trial court "decided a different case" or ruled on a claim that was not before it. Thus, we conclude, the trial court's findings demonstrate that it was aware of the issues in this case. See *Triple E Produce Corp*, 209 Mich App at 176.

To the extent that plaintiff argues that the trial court's factual findings were insufficient, we find that the trial court's opinion contained sufficient—even if minimal—factual findings for this Court to understand the basis of the trial court's ruling. See *id.*; *Powell*, 59 Mich App at 714. As demonstrated by the conflicting testimony at trial, this case essentially was a credibility contest. Thus, for plaintiff to prevail, it was necessary that the trial court find plaintiff's account of the events more credible than defendant's account. In its opinion, the trial court discussed its view regarding the importance of documentation for a "commercial transaction" and noted the lack of records establishing the "transaction" in this case. This discussion comprises the trial court's explanation for its ultimate conclusion, *i.e.*, that it was "not persuaded that the transaction occurred as contended by [p]laintiff," which we understand to be a specific credibility determination that the trial court did not believe plaintiff's account of the events at issue. Accordingly, given the trial court's credibility determination that the parties' dealings did not occur in the way described by plaintiff, it was not necessary for the trial court to make additional factual findings regarding the specific elements of plaintiff's claims. See MCL 600.2919a; *Aroma Wines*, 497 Mich at 346-359 (discussing the elements of common law and statutory conversion); *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992) (discussing the elements of civil conspiracy). Most significantly, this Court's review would not be facilitated by further explanation, see *Triple E Produce Corp*, 209 Mich App at 176, as it is apparent that the basis of the trial court's judgment was the fact that it credited defendant's account of the events over plaintiff's account. As such, the trial court made a conclusion of law that plaintiff failed to meet his burden of proof. Despite the brevity of the trial

court's opinion, it correctly applied the law after concluding that plaintiff failed to meet his burden. See *id.*

We also reject plaintiff's claim that the trial court's factual findings were "inconsistent with the evidence presented by either side" and clearly erroneous because there was no evidence of a commercial transaction expressly concerning the truck. As explained *supra*, a commercial transaction, although one not specifically related to the truck, was central to the factual basis of plaintiff's claim in this case, and the trial court's factual findings were consistent with this significant fact. Contrary to plaintiff's characterization of the record evidence, the parties' testimony did not establish that it was undisputed that plaintiff made a demand for the truck 38 days after he left it in defendant's possession. Defendant emphasized at trial that plaintiff never attempted to retrieve the truck and repeatedly testified that plaintiff "just left" the truck on his property. Further, plaintiff erroneously relies on defendant's cross-examination questions, which referenced a "discussion" that occurred 38 days after the truck was used to transport the equipment, as *evidence* that the parties agreed at trial that plaintiff made a demand for the truck. However, cross-examination questions themselves are not evidence. See M Crim JI 2.7; *People v Brown*, 267 Mich App 141, 153; 703 NW2d 230 (2005).

We "give deference to the trial court's superior ability to judge the credibility of the witnesses who appeared before it." *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003). Such deference is especially appropriate in this case in light of plaintiff's disjointed and abstruse testimony at trial. Therefore, we reject plaintiff's characterization of the evidence and reject plaintiff's claim that the trial court's factual findings were deficient or clearly erroneous. See *Trahey*, 311 Mich App at 593. Likewise, we conclude that the trial court's legal conclusion is supported by its factual determinations. See *Trader*, 293 Mich App at 215.

III. MOTION FOR A NEW TRIAL

Plaintiff also challenges the trial court's denial of his motion for a new trial because the court's verdict was against the great weight of the evidence.⁶ We reject plaintiff's claim.

A. STANDARD OF REVIEW

Generally, "[t]his Court reviews a trial court's decision regarding a motion for . . . a new trial for an abuse of discretion," which "occurs when a court chooses an outcome that is outside the range of principled outcomes." *Heaton v Benton Const Co*, 286 Mich App 528, 538; 780 NW2d 618 (2009). However, when a bench trial verdict is challenged on the basis that the verdict was against the great weight of the evidence, we review the trial court's findings of fact for clear error and its conclusions of law *de novo*. See MCR 2.613(C); *Amb's*, 255 Mich App at 652 n 14. Accordingly, the inquiry under this issue is, in effect, the same as that considered *supra*.

⁶ He makes no claims regarding the other grounds for a new trial that he raised in the trial court.

B. ANALYSIS

For the reasons discussed *supra*, the trial court did not clearly err in finding that plaintiff's claims lacked credibility and, for that reason, concluding that he failed to sustain his burden of proof. Given the documentary evidence admitted at trial and defendant's testimony, which the trial court implicitly found more credible than plaintiff's testimony, the court's factual findings were neither clearly erroneous nor against the great weight of the evidence, and plaintiff is not entitled to a new trial on that basis. See *Amb's*, 255 Mich App at 652 n 14.

IV. CONCLUSION

Plaintiff has failed to establish that the trial court's factual findings were improper or clearly erroneous. Likewise, given the trial court's credibility determinations, the trial court did not err in denying plaintiff's motion for a new trial.

Affirmed.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Jane E. Markey